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Iran-Contra Affair

The Patriotism Defense: Sometimes It Works, Sometimes It Doesn't

By PHILIP SHENON
Special to The New York Times

WASHINGTON, May 28 — When Government officials in Washington are accused of a crime, history shows that they often wrap themselves tightly in the American flag. Often with good reason.

It has been called the patriotism defense. Criminal suspects say they were only acting in the best interests of their country and at the behest of superiors.

In the Iran-contra affair, it appears to be the defense strategy of choice. "I have no doubt that we'll be seeing the greatest possible use of it," said Charles F. C. Ruff, a former United States Attorney in Washington.

Although no Government officials have yet been charged with crimes in the Iran-contra affair, one former

United States of America." He added, "This marine is never going to plead guilty to anything, ever."

Before this, the broadest recent use of the patriotism defense occurred in the Watergate scandals. There, the defense flopped; almost everyone who was charged with a crime was convicted, and many went to prison.

But the Iran-contra case is different, in part because a number of suspects are military officers with distinguished records. Lawyers say the patriotism defense, used properly, could help keep some suspects out of court and others out of prison.

Prosecutors are supposed to act as the conscience of a community, and they have broad discretion in bringing criminal charges. Suspects who demonstrate that they acted selflessly and carried out a crime because they thought it would help the country may persuade a prosecutor not to seek an indictment or persuade him to seek only minor charges.

'Huge Amount of Discretion'

"It happens all the time," said William W. Greenhalgh, a professor of law at Georgetown University who specializes in criminal law procedures. "Prosecutors have a huge amount of discretion. They're not going to go after marginal cases, and the patriotism defense can tip the scales."

That is what happened with Richard Helms, a former Director of Central Intelligence who admitted in 1977 that he had not told Congress the full truth about the Central Intelligence Agency's covert involvement in Chile. Mr. Helms argued that he did not have authority to disclose details of the operation in Chile.

Mr. Helms could have faced perjury charges, a crime that can carry a harsh prison term. Instead the Justice Department and a Federal judge allowed him to plead no contest to two misdemeanor charges; the judge fined him \$2,000 and suspended a two-year prison term.

'Outstanding Public Service'

At the time of the plea, the Justice Department praised Mr. Helms for a

"most distinguished career" and "outstanding public service to the United States." In 1983 President Reagan presented him with the National Security Medal.

Once criminal charges have been filed and a case goes to trial, the patriotism defense is trickier to use. The law is the law, and someone who commits a crime out of love of country is usually held to be no less guilty than someone with selfish intentions. But luckily for defendants, trial juries are seldom predictable.

"A jury is always going to look at the worth of a defendant's character," said Michael Tigar, a professor of law at the University of Texas. "Jurors can, and do, acquit a defend-

ant regardless of a court's instructions."

Appearances are important, and during trial, defendants are advised to appear confident but humbled, loyal but not zealous. A uniform almost always helps; since the Iran-contra affair became news, Colonel North has made his court appearances in full uniform, complete with a chestful of ribbons for valor.

A parade of well-known character witnesses is also of use, especially if they can testify about a defendant's past heroism under fire.

In arguing the defense case, lawyers try to portray a client who did not personally profit from the crime (Colonel North may have already lost on this point; Congressional investigators introduced evidence last week that he had cashed traveler's checks

'Everything that I did was done in the best interests of the United States of America.'

Lieut. Col. Oliver L. North

National Security Council aide, Lieut. Col. Oliver L. North, has been named an unindicted co-conspirator in a tax conspiracy case related to the raising of funds for the Nicaraguan rebels, the contras.

Colonel North has said almost nothing publicly since the Iran arms sales were exposed last November. But when a television reporter caught up with him at a horse show in Virginia earlier this month, Colonel North agreed to appear on camera and gave a glimpse of what appears to be his defense strategy.

"I can tell you this," he said in a firm voice. "Everything that I did was done in the best interests of the



The New York Times, Associated Press

Some who have said patriotism was their motivation after actions taken in the name of the Government came into question: top, Lieut. Col. Oliver L. North;

bottom left, W. Mark Felt and Edward S. Miller, who authorized break-ins of homes, and Richard Helms, former Director of Central Intelligence.

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drawn on contra funds to buy such things as snow tires.)

And, if possible, the defendant is portrayed as a scapegoat who was following the orders of senior officials.

"I predict you'll see a lot of people arguing they were scapegoats, and I won't deny that it can be a fine defense," said a Washington lawyer who is representing a key figure in the Iran-contra affair. "Juries never like to punish a defendant if they think he's a scapegoat."

No one is comparing the crimes of the Iran-contra affair with the horrors of the My Lai massacre of the Vietnam War, but the case that arose from that incident is instructive in showing how the patriotism defense may be instrumental in blocking criminal charges.

The Army originally charged 25 officers and enlisted men with offenses, including murder, linked to the massacre, in which at least 22 Vietnamese citizens were killed in a three-hour raid by United States troops in 1968.

A common defense offered in the court proceedings was that the defendants were loyal soldiers who had followed the orders of military superiors.

In the end, of all those charged, only one, William L. Calley Jr., a first lieutenant, was convicted of a crime, and his punishment was limited. Mr. Calley argued that he had been trained by his superiors to "seek out and destroy human beings."

Mr. Calley was originally sentenced to life in prison at hard labor.

That was cut to 20 years, then 10 years, and he eventually served three years of house arrest.

A more recent example of the effectiveness of the patriotism defense concerned two former senior officials of the Federal Bureau of Investigation, W. Mark Felt and Edward S. Miller, who were convicted in 1980 of conspiring to violate the constitutional rights of American citizens by authorizing illegal break-ins.

The break-ins occurred at homes in New York and New Jersey in the search for members of a militant anti-war group, the Weather Organization.

Mr. Felt and Mr. Miller acknowledged that they had not sought warrants for the searches but insisted that the break-ins were a patriotic act — the Underground, they said, posed a threat to national security — and that they had the approval of their superiors.

Pardoned by Reagan

The defense strategy apparently had its effect on the judge on the case, who agreed not to sentence the two men to prison and imposed relatively small fines.

President Reagan was clearly moved by their argument as well. In 1981 he granted them pardons, saying that the two men "acted on high principle to bring an end to the terrorism that was threatening our nation."

Mr. Felt and Mr. Miller, the President said, "acted not with criminal intent, but in the belief that they had grants of authority reaching to the highest levels of Government."

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